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PROSECUTING OBSCENITY CASES: AN INTERVIEW WITH MARY BETH BUCHANAN*

BY ROBERT D. RICHARDS* & CLAY CALVERT**

INTRODUCTION

It is March 20, 2010 — the day before Congress will cast a contentious and momentous vote on health care reform¹ — and candidate Mary Beth Buchanan has been up since 4:15 a.m. She's in full campaign mode for the November 2010 elections, running as a Republican for a seat in the U.S. House of Representatives² held by

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1. See generally Shailagh Murray & Lori Montgomery, *Divided House Passes Health Bill*, WASH. POST, Mar. 22, 2010, at A1 (reporting that “House Democrats scored a historic victory in the century-long battle to reform the nation's health-care system late Sunday night, winning final approval of legislation that expands coverage to 32 million people and attempts to contain spiraling costs” and indicating, “No Republicans join[ed] 219 to 212 majority”).

2. See Timothy McNulty, *Buchanan Will Challenge Altmire*, PITT. POST-GAZETTE, Feb. 18, 2010, at A1, available at 2010 WLNR 3393044 (reporting that “[t]he worst kept secret in local politics is out: Former U.S. Attorney Mary Beth Buchanan is officially running for Congress, and two-term U.S. Rep. Jason Altmire, D-McCandless, may face a tough re-election bid this

Democrat Jason Altmire. As *The Washington Post* reported earlier that week, “she has already made health care an issue.”³

The *Pittsburgh Post-Gazette*, a leading local newspaper in the Fourth Congressional District of Pennsylvania where Altmire and Buchanan are competing, features a front-page, above-the-fold headline that day announcing that Altmire will break ranks with his party and “vote against the health care overhaul.”⁴ Buchanan is quoted in the article, blasting the second-term Democrat for dilly-dallying on the issue — “he shouldn’t have sat on the fence as long as he has”⁵ because “[p]eople in the district have been clear they are opposed to ‘Obamacare.’”⁶

But when Buchanan — a graduate of the University of Pittsburgh School of Law who became a U.S. Attorney in September 2001⁷ — arrives that morning in the lobby of the Hilton Pittsburgh, she is not there to talk about politics, Altmire, or even the impending vote on health care. Instead, she has come to speak to a tiny audience of two non-constituents — the authors of this article — about her former career as the U.S. Attorney for the Western District of Pennsylvania⁸ and, in particular, obscenity law⁹

year”). Ms. Buchanan was defeated for her party’s nomination by Keith Rothfus, an attorney and former Bush administration official. Timothy McNulty & Vivian Nereim, *Rothfus Trounces Buchanan; He Defeats Former U.S. Attorney for Chance to Take on Altmire in November*, PITT. POST-GAZETTE, May 19, 2010, at B1, available at 2010 WLNR 10329068.

3. Sandhya Somashekhar & Paul Kane, *As House Vote Nears, Pressure Builds on the Undecided*, WASH. POST, Mar. 18, 2010, at A1.

4. Daniel Malloy, *Altmire Says No to Health Care Bill: Cost Too High and Constituents Opposed, McCandless Democrat Explains*, PITT. POST-GAZETTE, Mar. 20, 2010, at A1, available at 2010 WLNR 5854125.

5. *Id.*

6. *Id.*

7. See Paula Reed Ward, *Buchanan Doesn’t Plan to Step Down as U.S. Attorney*, PITT. POST-GAZETTE, Dec. 4, 2008, at B1, available at 2008 WLNR 23302340 (writing that “Buchanan was appointed by President George W. Bush in September 2001” and noting that “the University of Pittsburgh law school graduate has worked in the federal prosecutor’s office since 1988”).

8. See generally Paula Reed Ward, *No Trouble for Buchanan to Stay in Line; Amid Battle Over Firing of 8 Other U.S. Attorneys, She’s a Model Appointee*, PITT. POST-GAZETTE, Mar. 18, 2007, at A1, available at 2007 WLNR 5114496 (providing a review of the first five-plus years of Buchanan’s

and her prosecution of two high-profile obscenity cases that drew national headlines in the mainstream news media¹⁰ — *United States v. Extreme Associates, Inc.*¹¹ and *United States v. Fletcher*.¹²

tenure as U.S. Attorney for the Western District of Pennsylvania and characterizing her as “loyal, hard-working and smart” but also as “a self-promoter, who, despite working very hard, alienates some people by using high-profile cases to further her own ambitions”).

9. Obscenity falls outside the First Amendment’s protection of free speech. *See Roth v. United States*, 354 U.S. 476, 485 (1957) (writing that “obscenity is not within the area of constitutionally protected speech or press”). Although the U.S. Supreme Court held in *Stanley v. Georgia*, 394 U.S. 557 (1969), that there is a right to possess obscene material in the privacy of one’s own home. (*See id.* at 568 (holding “the First and Fourteenth Amendments prohibit making mere private possession of obscene material a crime”), there is not “a correlative right to receive it, transport it, or distribute it.” *United States v. Orito*, 413 U.S. 139, 141 (1973).

10. *See, e.g.,* Orrin Hatch & Sam Brownback, Op-Ed., ‘Extreme’ Judicial Activism, WASH. TIMES, Feb. 10, 2005, at A19, available at <http://www.lexisnexis.com> (opining against the decision of U.S. District Judge Gary Lancaster in *United States v. Extreme Associates* to dismiss the case and arguing that Lancaster’s dismissal “is what happens when judges ignore the law in favor of their own agenda. They take a little piece of this, toss in a chunk of that, and smear a layer of the other on top—whatever it takes to get them where they want to go”); Neil A. Lewis, *A Prosecution Tests the Definition of Obscenity*, N.Y. TIMES, Sept. 28, 2007, at A27 (reporting on the prosecution of *United States v. Fletcher* and describing how Mary Beth Buchanan is “regarded by many people in the pornography industry and by outside analysts as the government’s most aggressive opponent of the spread of pornography in the nation”); Eric Lichtblau, *Justice Dept. Fights Ruling on Obscenity*, N.Y. TIMES, Feb. 17, 2005, at A25 (reporting on the case of *United States v. Extreme Associates* and noting that the Justice Department decided to appeal a ruling in that case by U.S. District Judge Gary Lancaster that “threw out a 10-count criminal indictment that charged . . . Extreme Associates, and the husband-and-wife team that owns it [Robert Zicari and Janet Romano] with violating federal obscenity laws”); Leonard Pitts, *Art or Pornography? A Fine Line Indeed*, TULSA WORLD (Okla.), Sept. 2, 2008, at A9, available at 2008 WLNR 16648663 (writing about the case of *United States v. Fletcher* in the author’s nationally syndicated newspaper column); Paula Reed Ward, ‘Rare’ Obscenity Case Targets Writings; U.S. Prosecutes Woman for Explicit Fiction Posted on Internet, PITT. POST-GAZETTE, Oct. 28, 2006, at A9, available at 2006 WLNR 18734515 (“Karen Fletcher, 54, is accused of writing dozens of fictional stories that involve the rape, torture and murder of children, including infants, and posting them to the Internet. She reportedly then sold subscriptions to the site, at \$10 per month.”).

Dressed casually in jeans and a Justice Department-embazoned fleece pullover, Buchanan also is ready to discuss the case of *United States v. Stevens*¹³ that emanated from the Western District of Pennsylvania¹⁴ under her leadership. *Stevens*, which came before the U.S. Supreme Court for oral argument in October 2009,¹⁵ tested the constitutionality of a federal statute that makes it a crime when a person “knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain”¹⁶ unless the depiction “has serious religious, political, scientific, educational, journalistic, historical, or artistic value.”¹⁷ The Supreme Court had not handed down its ruling in this First

11. *U.S. v. Extreme Assoc., Inc.*, Criminal No. 03-0203, 2009 U.S. Dist. LEXIS 2860 (W.D. Pa. Jan. 15, 2009).

12. Indictment, *United States v. Fletcher*, No. 06-329 (W.D. Pa. Sept. 26, 2006), available at <http://www.citmedialaw.org/sites/citmedialaw.org/files/2006-09-26-Fletcher%20Indictment.pdf>. See Press Release, U.S. Department of Justice, Pennsylvania Woman Pleads Guilty and is Sentenced on Obscenity Charges (Aug. 7, 2008), available at http://www.justice.gov/criminal/ceos/Press%20Releases/WDPA_FLETCHER-GUILTY_08-07-08.pdf (last visited Oct. 31 2010) (describing the outcome in the case against Karen Fletcher).

13. 533 F.3d 218 (3d Cir. 2008) (en banc), *aff'd*, *U.S. v. Stevens*, 559 U.S. ___, 130 S. Ct. 1577 (2010).

14. As the U.S. Court of Appeals for the Third Circuit wrote in the case:

In March of 2004, a federal grand jury sitting in the Western District of Pennsylvania returned a three-count indictment against Stevens, a resident of Virginia. All three counts charged Stevens with knowingly selling depictions of animal cruelty with the intention of placing those depictions in interstate commerce for commercial gain, in violation of 18 U.S.C. § 48.

Id. at 220.

15. See Joan Biskupic, *Animal Cruelty Law Too Broad, Justices Suggest: Case Examines Whether Rules Against Heinous Images Restricts Free Speech*, USA TODAY, Oct. 7, 2009, at 2A (describing the oral argument in the case and asserting that the nation’s high court seemed poised “to strike down a federal law that makes it a crime to sell depictions of animal cruelty because the law sweeps too broadly and violates free-speech rights”).

16. 18 U.S.C. § 48(a) (2006).

17. *Id.* at § 48(b).

Amendment-based¹⁸ case when the authors interviewed Buchanan.¹⁹

This article centers on that interview, conducted four weeks after Buchanan spoke at the *First Amendment Law Review*'s symposium, "Sexually Explicit Speech and the First Amendment."²⁰ At that time, she appeared on a panel with two legal adversaries—adult entertainment industry defense lawyers Jeffrey Douglas²¹ and Lawrence Walters.²² This article addresses some of the topics she

18. The First Amendment to the United States Constitution provides, in pertinent part, that "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. CONST. amend. I. It is well-established that the Free Speech and Free Press Clauses are incorporated through the Fourteenth Amendment Due Process Clause to apply to state and local government entities and officials. *See* *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

19. The United States Supreme Court ruled in April of 2010 that federal statute 18 U.S.C. § 48 is unconstitutional. *See* *U.S. v. Stevens*, 559 U.S. ___, 130 S. Ct. 1577 (2010).

20. The *First Amendment Law Review*'s symposium was held Friday, Feb. 19, 2010. *See* Spring 2010 Symposium: Sexually Explicit Speech and the First Amendment, *available at* <http://www.firstamendmentlawreview.org/symposium.html> (last visited Oct. 31, 2010).

21. According to adult industry trade publication *AVN*, Douglas:

is a Santa Monica lawyer, representing all segments of the adult entertainment industry since 1982. He emphasizes obscenity defense and 18 U.S.C. 2257. He is Chair of the Free Speech Coalition, and Chairman Emeritus of the First Amendment Lawyers Association. A nationally recognized spokesperson for the adult entertainment industry, as well as an expert witness, Mr. Douglas appears regularly as a media commentator, and on invitation, has testified before Congress.

Jeffrey J. Douglas, Profile, *AVN.COM*, <http://www.avn.com/porn-stars/Jeffrey-J-Douglas-270785.html> (last visited Oct. 31, 2010).

22. On his law firm's website, Walters describes himself as the managing partner of:

Walters Law Group, a boutique law firm concentrating in First Amendment, Internet, Intellectual Property and Gaming law. Mr. Walters has developed a noteworthy reputation for representing the interests of the online entertainment community, as well as other more traditional industries. He has practiced law for 22 years,

discussed on the panel, but goes into much more detail and depth, providing an inside look—from a prosecutor’s perspective—of federal obscenity prosecutions.

Part I describes the methodology and procedures used to conduct the interview, to edit it, and to prepare it for this article. Part II then moves to the heart of the article, setting forth the comments, opinions, and remarks of Buchanan on four distinct subjects: 1) obscenity law and federal obscenity prosecutions,²³ 2) the case of *United States v. Extreme Associates, Inc.*,²⁴ 3) the case of *United States v. Fletcher*,²⁵ and 4) the case of *United States v. Stevens*.²⁶ Finally, the Conclusion provides the authors’ analysis of Buchanan’s comments and sets forth some closing observations about the state of federal obscenity prosecutions.²⁷

I. METHODOLOGY AND PROCEDURES

The interview took place at a table in the Scenes Lounge at the Hilton Pittsburgh, starting at approximately 10:50 a.m. on Saturday, March 20, 2010, and lasting until noon. The interview was recorded with Marantz, broadcast-quality recording equipment on an audiotape using a tabletop microphone, and the tape was later transcribed that same month by one of the authors in State College, Pennsylvania. Both authors then reviewed and proofread the transcript for accuracy and any typographical errors in the transcription process.

The authors then made a few very minor changes for syntax, but did not alter the substantive content or material meaning of any of Mary Beth Buchanan’s responses. Some responses were reordered and reorganized to reflect the four themes of this article

and is recognized as a national expert on legal issues pertaining to Free Speech and the Internet.

Qualifications & Experience, Walters Law Group, <http://www.firstamendment.com/qualifications> (last visited Oct. 31, 2010).

23. See *infra* notes 28-39 and accompanying text.

24. See *infra* notes 40-66 and accompanying text.

25. See *infra* notes 67-80 and accompanying text.

26. See *infra* notes 81-92 and accompanying text.

27. See *infra* notes 93-115 and accompanying text.

set forth below in Part II, and other portions of the interview were omitted as extraneous, redundant, or beyond the scope of this article. The authors retain possession of the original audio recording of their interview with Mary Beth Buchanan, as well as the printed transcript of the interview.

For purposes of full disclosure and the preservation of objectivity, it should be noted that the authors had previously met Mary Beth Buchanan on only one prior occasion—the *First Amendment Law Review's* symposium in February 2010. Neither of the authors has made a financial campaign contribution to either Buchanan or Altmire.

The interview was arranged via e-mail and telephone correspondence. Importantly, Buchanan did *not* have an advance opportunity to review or preview any of the questions she was asked, thus allowing for greater spontaneity and immediacy of responses. Prior to the interview, Buchanan was only informed that the authors wanted to question her about obscenity law and the three cases—*Extreme Associates*, *Fletcher*, and *Stevens*—that she addressed during the interview. Similarly, Buchanan did not read or review any drafts of this law journal article before it was published.

II. THE INTERVIEW

This part, which is divided into four sections based upon subject matter, sets forth in question-and-answer fashion the interview conducted by the authors with Mary Beth Buchanan. Each of the four sections begins with a brief overview of the topic or issues that was drafted by the authors. Within the actual remarks of Buchanan, the authors have added more than a dozen footnotes where, in their collective opinion, further information might prove helpful to readers of this article.

A. *Obscenity Law and Federal Obscenity Prosecutions*

In this section, Mary Beth Buchanan expresses her thoughts and beliefs about the three-part test for obscenity adopted by the United States Supreme Court more than thirty-five years ago in

Miller v. California.²⁸ In *Miller*, the Court held that when determining whether material is obscene, jurors and judges must consider:

(a) whether “the average person, applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest, . . . (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.²⁹

One specific aspect of this test that Buchanan addresses is its deployment of local community standards. The Court in *Miller* reasoned that “our Nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 States in a single formulation, even assuming the prerequisite consensus exists.”³⁰ One theme that emerges from Buchanan’s remarks is that she believes *Miller* was a viable standard back in 1973 and that it remains that way today in the age of the Internet.

In addition to addressing *Miller*, Buchanan discusses and describes her goals and motivations for bringing obscenity prosecutions, including the harms that she believes are caused by sexually explicit adult entertainment content. She also addresses questions about the Department of Justice’s priorities in prosecuting cases and how federal obscenity prosecutions are selected and developed.

QUESTION: What is your opinion of the test for obscenity fashioned by the United States Supreme Court in 1973 in *Miller v. California*?

BUCHANAN: The test set forth by the U.S. Supreme Court in *Miller* was a good test in 1973 and is still a good test today for us, as a community, to determine whether certain material is viewed as

28. 413 U.S. 15 (1973).

29. *Id.* at 24.

30. *Id.* at 30.

obscene. The *Miller* test allows citizens across the country to consider what they believe their community would find patently offensive in terms of sexually explicit material.

QUESTION: So you like the fact that there is a local community aspect about it rather than a national standard? Is that one of the parts that appeals to you in the *Miller* test?³¹

BUCHANAN: I definitely believe that a community standard is the appropriate way for us, as individuals and as a country, to judge whether particular sexually explicit material is obscene.

QUESTION: Given the fact that so much sexually explicit material is distributed via the Internet, do you at least recognize the other side of the argument — that a national community standard might make sense?

BUCHANAN: I don't believe that a national standard is necessary because people who produce sexually explicit material do have the ability to limit where this material is viewed. Technology has advanced to the point where this material can be inaccessible to certain parts of the country, and they can certainly limit their distribution of it to certain parts of the country in their acceptance of members to any particular sites.

QUESTION: Are there any aspects of *Miller* that you find troublesome, perhaps in regard to seemingly vague terms like prurient interest³² or patently offensive?³³

31. The notion of local community standards is troubling for many. For instance, Alan Isaacman, the former attorney for adult periodical publisher Larry Flynt and the person who successfully argued *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988), to the U.S. Supreme Court, once told the authors of this article:

Something may be protected in Des Moines or in New York City and not in Salt Lake City or Mobile, Alabama. It doesn't make sense to me that we're all citizens of the same United States and that a citizen in one place is able to say something and have the protection of the national constitution while a citizen in another place in the country can be thrown in jail for saying the same thing.

Clay Calvert & Robert D. Richards, *Alan Isaacman and the First Amendment: A Candid Interview With Larry Flynt's Attorney*, 19 CARDOZO ARTS & ENT. L.J. 313, 323 (2001).

BUCHANAN: I think that the terms are legalistic in nature, but often that is the way courts define legal issues. Our judges have been dealing with the *Miller* standard since its inception in 1973. To the extent that juries have any difficulty understanding terms like prurient or patently offensive, our judges have been doing a very good job of explaining those terms to them.

QUESTION: So you're comfortable that when a jury goes off to deliberate, it has in its mind what the legal standard is that it should be applying?

BUCHANAN: I do. I believe that the *Miller* test gives juries the framework from which they can view sexually explicit material and determine whether it fits the standard and is, in fact, obscene. Throughout the course of legal proceedings and dealing with obscenity issues, juries have always had the opportunity to ask the judge for more specific instructions if they have any difficulty understanding the terms of any jury instruction, including the *Miller* test.

QUESTION: It seems that the venue shopping permitted under *Miller*³⁴ gives the prosecution a great advantage in obscenity cases, as government officials can download content anywhere in the country and haul defendants into more conservative communities. For instance, you brought the defendants in *United States v. Extreme Associates* into Pennsylvania and out of Southern

32. See *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985) (discussing the meaning of the term prurient interest as it is used in obscenity law and providing that "prurience may be constitutionally defined for the purposes of identifying obscenity as that which appeals to a shameful or morbid interest in sex . . .") (quoting *Roth v. United States*, 354 U.S. 476 (1957)).

33. See *Jenkins v. Georgia*, 418 U.S. 153, 160-61 (1974) (discussing the meaning of the term patently offensive as it is used in obscenity law and holding that the content in the movie *Carnal Knowledge* was not patently offensive).

34. See *United States v. Blucher*, 581 F.2d 244 (10th Cir. 1978), *vacated*, *Blucher v. United States* 439 U.S. 1061 (1979) (describing how the venue-shopping technique is used to bring obscenity prosecutions in conservative communities). Professor John Fee has observed that the advent of the Internet, when linked to *Miller*'s notion of local community standards "encourages forum-shopping by prosecutors." John Fee, *Obscenity and the World Wide Web*, 2007 BYU L. REV. 1691, 1715 (2007).

California. How important is venue shopping as a strategic tool in obscenity prosecutions?

BUCHANAN: Well, I would certainly not classify prosecutorial discretion as venue shopping. Each prosecutor throughout the country has the ability to bring cases in his or her jurisdiction. The *Extreme Associates* case could have been brought in a number of districts around the country. It could have been brought where the material was produced or in any district where the material was distributed.

The case was brought into the Western District of Pennsylvania because the defendants sent the material to the district, both through the United States mail and also by having online customers in the Western District. In addition to the customers that purchased the material through the website or the mail, there was also a physical distribution site within the district where customers could purchase videotapes or DVDs that had been transported across state lines.

QUESTION: Where was that? Was that a store that sells them? Is that what you're saying?

BUCHANAN: Yes. There was a physical, brick-and-mortar distribution point where customers could come in and buy materials from a number of different producers and distributors.

QUESTION: Why is it important, in your mind, to prosecute obscenity cases that involve movies made by consenting adults?

BUCHANAN: The issue with respect to obscenity isn't whether the individuals who are the subject of the films are consenting, but whether the public at large views the material as obscene. We have limits in our law for the type of materials that can be distributed in public, regardless of who makes it or what they believe they're doing at the time they make sexually explicit material.

QUESTION: What are the harms or problems that you see caused by sexually explicit adult movies, either at the individual or societal level? In other words, what is the problem with them, as long as the performers are consenting adults?

BUCHANAN: Well I think that the term "consenting" is questionable at best. It's possible that many of the performers do,

in fact, consent to the conduct that is portrayed,³⁵ but others are under the influence of drugs, alcohol, or severe financial stress that causes them to take part in the production of these films that they might not otherwise do if they weren't in a similar situation.³⁶

35. Indeed, leading adult star Stormy Daniels has stated:

For those who say that porn exploits women I say, "Come to work with me for a day." I've never done anything that I didn't want to do. I own my own company. I write my own scripts and make the money. It's my face that sells the tapes, so they have to make me happy. If I'm so exploited, how come it's the only industry in the world where women make double what the men make?

Clay Calvert & Robert D. Richards, *Porn in Their Words: Female Leaders in the Adult Entertainment Industry Address Free Speech, Censorship, Feminism, Culture and the Mainstreaming of Adult Content*, 9 VAND. J. ENT. & TECH. L. 255, 281 (2006). Similarly, veteran adult performer Nina Hartley has stated:

It is so ignorant because all these women write about porn as theory—they read the books in college, they heard the speakers speak and the Professors talk about what the Professor believes is true. They've even probably been shown a couple of really egregious examples. But they don't talk to people who are self-reportedly happy with it. They've never come to us and actually talked to any of us.

Id. at 284.

36. Former adult star Sharon Mitchell, who today directs the Adult Industry Medical Healthcare Foundation, suggests that some of the agents in the adult industry may be exploiting some of the female talent:

Agents now kind of rule the industry. Agents are now recruiting people from, literally, the middle of the country that are eighteen years old who haven't remotely had any type of sex, let alone the type of sex they're probably going to have tomorrow. You've got these girls who the agents tell, "This is just something you have to do—don't worry, the odds are slim." We're trying to give them all of this counseling and to get them to take our video home to watch, because we know that they're going to be back here next month with this, and that if they're just starting out because the agents run them into the ground.

Id. at 287.

QUESTION: In your mind, is it more important to prosecute obscenity cases involving adult movies or to prosecute child pornography cases?

BUCHANAN: In the Western District of Pennsylvania and throughout the country, all prosecutors must deal with balancing resources and the particular needs within each district. In my district, we focused our efforts on those types of harms that were most pressing for the residents of the Western District. We increased our prosecution of child exploitation cases six-fold during my tenure as U.S. Attorney. We prosecuted a handful of obscenity cases, but those cases that we did prosecute, although small in number compared to the greater number of child exploitation cases, had significant impact on the law and on the production of obscene material.

QUESTION: Back to your answer regarding the consent part and how some of the talent or performers might be under the influence of drugs or alcohol, is there evidence of that, or how do you come to that conclusion?

BUCHANAN: In deciding whether to bring charges in individual cases, one of the things a prosecutor has to do is view the material and view it in light of the current law and the evidence available to meet our burden of proof. Through viewing much of this material, it was obvious that many of the people portrayed in the videos were under the influence of some drug or alcohol.

QUESTION: So, from your observations of the content, basically, you were able to tell that?

BUCHANAN: That's one way in which I developed this viewpoint. Another is from the numerous letters that I've received throughout my career as a prosecutor. I've received letters from mothers whose children have gone into the adult entertainment business. Many of these mothers have told heartbreaking stories in their letters about daughters who have left home at an early age, sometimes even before the age of eighteen. Many of these young women have become drug addicts or are under the influence of those who are making these movies in the adult entertainment business. As a mother myself, I can understand their care and concern for their children and, as a prosecutor, I share that concern.

QUESTION: Do you think you were able to successfully convey that argument to the public?

BUCHANAN: I think that a lot of people in the public understand that the material prosecuted in the *Extreme Associates* case is far and away of greater concern to the public and more hazardous than other types of sexually explicit material. Some people in the public don't want to understand.

As prosecutors, it's our job to bring the cases, to present the evidence to the jury and to persuade fellow citizens in the district, with proof beyond a reasonable doubt, that the material is in fact obscene. The way our legal system is set up makes it difficult for a prosecutor to explain to the public, during the pendency of a case, why a particular case is being brought because we don't want to do anything that would prejudice the defendant before having his or her trial.

QUESTION: When you were the U.S. Attorney for the Western District of Pennsylvania, how high of a priority was prosecuting obscenity for the U.S. Department of Justice under then U.S. Attorney General Alberto Gonzales?

BUCHANAN: It's difficult to determine the level of priority that obscenity was for the Justice Department. It was clear to the United States Attorneys around the country, both during the tenure of Attorney General John Ashcroft and Attorney General Alberto Gonzales, that obscenity was a priority for the department. We had many other priorities as well, so it was one of several priorities that were communicated to the U.S. Attorneys.

QUESTION: How is that communicated? Is that through letters you receive? How do they make it known?

BUCHANAN: The Attorney General of the United States, generally at the beginning of his or her term, communicates with U.S. Attorneys by holding face-to-face meetings with them, as well as national conferences, e-mail, and written communications with regard to the priorities. The Attorney General also establishes an Attorney General's Advisory Committee, which is made up of U.S. Attorneys throughout the country who sit on the advisory committee. The committee is also broken into subcommittees, which generally represent the priority areas for the Department of Justice. Through the advisory committee, the U.S. Attorneys

throughout the country, regardless of whether they participate on the advisory board itself or on subcommittees, receive regular information regarding the resources available to prosecute certain cases and the priorities that the department and the administration as a whole place on different types of criminal offenses.

QUESTION: Are you also concerned that the accessibility now to adult material through the Internet is one way that kids or unwilling adults may come upon it? Was that a factor in your decision to prosecute?

BUCHANAN: The availability of sexually explicit material on the Internet and through streams of commerce are exactly why the federal government has an interest in maintaining the channels of interstate commerce and preventing those who unwillingly receive it. That's why we have the ability to prosecute the distribution in interstate commerce. A lot of people make the argument that the government shouldn't have the ability to prosecute something that someone wants to view in their own home, but they aren't simply viewing it in their own home. It's being distributed from one point to another, and there's really no way to guarantee that others are not going to gain access to this material.

QUESTION: Do you think the cases would look stronger for the prosecutorial side if you actually had a person who unwittingly downloaded it or came across it rather than just a postal inspector or FBI agent who downloaded it?

BUCHANAN: Not necessarily. I think when you look at the letter of the law and you consider the material in light of the law, it's very clear that the type of material that the Justice Department is prosecuting is, in fact, in violation of the law. There probably are people who unwittingly come across this material everyday, but those individuals don't always come forward. I can tell you that there are various groups operating throughout the country that provide us with information on a regular basis about material that they have seen, either from their own investigation or inadvertently.

QUESTION: So a public interest type of group might go out and surf the web or say: "Here's some stuff you might go after." Is that what they do?

BUCHANAN: Yes, that's exactly what occurs. There are a lot of organizations concerned about the proliferation of adult obscenity.

QUESTION: One of the difficulties with adult obscenity is that, for instance, when you're prosecuting drug crimes, you know what drugs are illegal drugs and what drugs are available over the counter, etc. But from both the law enforcement perspective and the adult content producers' perspective, there's really no way of knowing whether the material that is being produced is "illegal" until the jury comes back and says so. That is very different from most other crimes.

BUCHANAN: I would say that you're correct — it's not absolutely certain until the jury comes back with a verdict. But the majority of people who produce this material know exactly what they're doing. They know what the law is and they have a pretty good idea of how juries are going to view this material. Most of them just assume that they are not going to get caught — that is very different from not knowing whether or not something is illegal.

QUESTION: Did anyone from the U.S. Department of Justice pressure, encourage, or otherwise suggest that you should prosecute obscenity cases as a U.S. Attorney?

BUCHANAN: The Department of Justice communicates clearly what the priorities of the Department are, and each of the U.S. Attorneys takes those national priorities into consideration, along with local priorities in determining how resources can be best used in each individual district. The Department of Justice has never suggested any criteria or quota system for the number of any type of cases that should be brought.

QUESTION: Prior to becoming the U.S. Attorney, and other than taking constitutional law, did you have any involvement with obscenity law in any other capacity?

BUCHANAN: Prior to becoming the U.S. Attorney, I had been an Assistant U.S. Attorney and handled a large number of cases involving child exploitation. In my investigations and prosecutions of that material, I did, on occasion, view material that could have been considered for obscenity prosecutions.

QUESTION: Do you believe the administration of President Barack Obama will push for the continued prosecution of obscenity cases targeting adult movies?

BUCHANAN: I really couldn't comment on that. I believe that each administration must look at what is occurring at the time, in terms of the issues that the public is presented with. Certainly, the Obama Administration has had to deal with a number of different issues — the financial crisis, the banking crisis, mortgage fraud — so those are some unique issues that are more pressing during this administration than during the last administration.

QUESTION: Is it correct to say that when John Ashcroft and the Bush Administration came into office, prosecuting obscenity was going to be a priority for the Justice Department, but then September 11, 2001, happened and priorities changed for the next several years?

BUCHANAN: I think that a lot of U.S. Attorneys who came into office in 2001 had ideas of what the priorities would be within their districts as well as nationally, and those priorities changed across the country after September 11th. There's no way to overestimate how great of an impact that had on changing priorities and the effect on resources that were available to the Justice Department.

QUESTION: How did the obscenity and related cases that you did prosecute — the *Extreme Associates* case, the *Stevens* case, the *Fletcher* case — come to be? Did the FBI contact your office? Did you contact law enforcement officials? How does that come about?

BUCHANAN: Most cases that are brought by a United States Attorney are brought to the attention of the U.S. Attorney's Office by investigating agencies, whether they are federal, state, or local. That's certainly how the *Fletcher* case and the *Stevens* case came to the attention of the Western District of Pennsylvania. The *Extreme Associates* case was somewhat different in that we were aware of that case in the district at the same time that officials in the Justice Department were also looking at the case.

QUESTION: What do you believe was your most important accomplishment as a U.S. Attorney?

BUCHANAN: One of the biggest accomplishments of my office during my tenure was the increase in our working relationship with law enforcement on every level. Many of the great successes that we had as an office were due, in large part, to the efforts of multiple agencies — particularly after 9/11 when the FBI had to shift its focus to terrorism prevention. A lot of those resources were not available to us for traditional law enforcement work, whether it was white-collar fraud or violent crime. We worked much more with law enforcement at different levels to accomplish our goals. Without having those relationships, we would not have been able to protect the public to the extent that we did.

QUESTION: What was your biggest disappointment, if any, while serving as a U.S. Attorney?

BUCHANAN: I'm not sure I was disappointed by anything.

QUESTION: According to a 2009 *Pittsburgh Post-Gazette* article, the caseloads during your time as U.S. Attorney doubled, and 90 percent of those cases dealt with guns, pornography, and drugs.³⁷ Is that a fair assessment?

BUCHANAN: I would not agree with the accuracy of that statement. The prosecutions within the Western District increased over 300 percent during my tenure. There were certain areas in which we focused our efforts and saw a significant increase. Those areas included drug-trafficking, violent crime, child exploitation, mortgage fraud, identity theft, and illegal immigration. Those were the areas in which we focused our resources. There were more than 5,000 convictions and only two of those cases were obscenity cases. In choosing to use the resources in the Western District, we did so in a manner that was consistent with the law enforcement concerns of the district.

QUESTION: The same 2009 *Pittsburgh Post-Gazette* article referenced earlier also stated that you were “known to be demanding in the office”³⁸ and contended that you sometimes used

37. Paula Reed Ward, *U.S. Attorney Takes a Bow*, PITT. POST-GAZETTE, Nov. 17, 2009, at A1, available at 2009 WLNR 23140438.

38. *Id.*

your assistants to further your own career.³⁹ How do you respond to that?

BUCHANAN: I think that anyone who is a good manager and a good leader doesn't demand anything more of the people working for them than they would demand of themselves. We worked to make sure that everyone was working to his or her full potential, and that was accomplished in a lot of ways. First, we found out what people were good at and what they wanted to do. Second, we shifted their caseloads so that they were interested and challenged by the work they were doing. We were successful. The morale increased during my tenure, as well as the productivity.

With respect to having members of my staff work on speeches or other comments, it's very common for U.S. Attorneys to rely upon assistants in the office who are subject-matter experts with respect to particular areas. As the U.S. Attorney, I am responsible for overseeing all activities in the office, but I can only do that by relying upon the subject-matter expertise of the assistants in the office.

QUESTION: Do you think the news media — print or broadcast — still play a watchdog role on government? Are they not as aggressive as they should be, or are they too aggressive?

BUCHANAN: I never want to try to characterize everyone in a particular industry as being the same. I can say, however, that there seems to be a greater focus on interesting the public in stories and creating more interest in particular publications than there is in actually reporting the facts and reporting the stories as they happen. That's disappointing.

*B. United States v. Extreme Associates, Inc.*⁴⁰

On February 7, 2002, the PBS television show *Frontline* broadcast a special report called "American Porn."⁴¹ Among other

39. See *id.* (asserting that Buchanan "sometimes used her assistants to further her own career, sometimes having assistant prosecutors write speeches for her").

40. 352 F.Supp.2d 578 (W.D. Pa. 2005), *rev'd*, 431 F.3d 150 (3d Cir. Pa. 2005).

41. *Frontline: American Porn* (PBS television broadcast

things, it featured interviews with Robert Zicari (known as Rob Black in the adult industry) and Janet Romano (known as Lizzie Borden), the husband-and-wife proprietors of a Southern California-based adult movie company called Extreme Associates. During the *Frontline* broadcast, Zicari candidly remarked that “[w]e’re known for all the taboo stuff that everyone’s said you can’t do, and we do it. And we sell it, and people are entertained because people are bored with the other stuff.”⁴² Janet Romano elaborated in equally unfiltered language, defiantly declaring:

I don’t shoot the lovey-dovey porno that you watch all the time. This is for people who watch porno all the time, and they’re sick of the husband and the wife making love with candles. This is for—if you want to jerk off to fuckin’ porno with your old lady, and you’re watching it and you’re getting into it, and it’s hot, steamy sex that you’re, like—after you get done you feel like you just did drugs. Like, “Yeah!~”⁴³

The “American Porn” episode also included an on-the-set segment where an Extreme Associates movie, featuring a woman named Veronica Caine, was being filmed.⁴⁴ “Before the scene is finished[,] . . . Veronica will be kicked and beaten. She will have oral, vaginal and anal sex with each of these actors. Then they will pretend to cut her throat and leave her for dead in a pool of blood,”⁴⁵ a narrator for “American Porn” states.

It was this type of content that caught the eye of officials at the Justice Department, including Mary Beth Buchanan, and that led her to prosecute Zicari, Romano, and their company. In August 2003, a federal grand jury in Western Pennsylvania returned a ten-

Feb. 7, 2002). See *American Porn*, PBS website, available at <http://www.pbs.org/wgbh/pages/frontline/shows/porn> (last visited Oct. 31, 2010).

42. Transcript, *Frontline: American Porn* (PBS television broadcast Feb. 7, 2002), <http://www.pbs.org/wgbh/pages/frontline/shows/porn/etc/script.html> (last visited Oct. 31, 2010).

43. *Id.*

44. *Id.*

45. *Id.*

count indictment against the trio, but the case was thrown out in a stunning turn of events in January 2005 by U.S. District Judge Gary Lancaster.⁴⁶ Lancaster cited favorably the U.S. Supreme Court's 2003 opinion in *Lawrence v. Texas*⁴⁷ in which a divided Court declared unconstitutional a Texas anti-sodomy law. Justice Anthony Kennedy, in writing the opinion of the Court in *Lawrence*, reasoned that:

Liberty protects the person from unwarranted government intrusions into a dwelling or other private places. In our tradition the State is not omnipresent in the home. And there are other spheres of our lives and existence, outside the home, where the State should not be a dominant presence. Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.⁴⁸

Judge Lancaster in *Extreme Associates*, in turn, followed this chain of logic, opining that:

[T]he federal obscenity statutes burden an individual's fundamental right to possess, read, observe, and think about what he chooses in the privacy of his own home by completely banning the distribution of obscene materials. As such, we have applied the strict scrutiny test to those statutes. The federal obscenity statutes fail the strict scrutiny test because they are not narrowly drawn to advance the asserted governmental interests of protecting minors and unwitting adults from exposure to obscene materials, as applied to these defendants and the facts of this case. Because the federal obscenity statutes are unconstitutional as

46. *United States v. Extreme Associates, Inc.*, 352 F. Supp. 2d 578 (W.D. Pa. 2005), *rev'd*, 431 F.3d 150 (3d Cir. 2005), *cert. denied*, 547 U.S. 1143 (2006).

47. 539 U.S. 558 (2003).

48. *Id.* at 562.

applied, defendants' indictment must be dismissed.⁴⁹

But the United States Court of Appeals for the Third Circuit reversed Judge Lancaster's ruling and remanded the case.⁵⁰ Eventually, in March 2009 — more than five and a half years after the indictment, the case settled when Zicari, Romano, and Extreme Associates pleaded guilty to one count of conspiracy to distribute obscene matter.⁵¹ In July 2009, Zicari and Romano were each sentenced to one year plus one day in federal prison.⁵² During the sentencing, Buchanan stated, "[o]n the spectrum of obscene material, this is on the farthest edge of what can be produced"⁵³ and called the content "vile and disgusting."⁵⁴

In this section, Buchanan answers a series of questions about *United States v. Extreme Associates, Inc.*, with her responses providing new depth and breadth about both the case and its resolution.

QUESTION: How did the *Extreme Associates* case come to your attention? Was that because of the *Frontline* documentary?

BUCHANAN: It would probably be accurate to say that the *Frontline* broadcast caused the *Extreme Associates* case to come to the attention of the U.S. Justice Department and my district. We were aware of Extreme Associates in the past. We had communicated with law enforcement in Los Angeles about Extreme and other producers, but the *Frontline* broadcast highlighted and put a much greater focus on the types of material and the egregiousness of the material that was being produced by Extreme.

49. *United States v. Extreme Associates, Inc.*, 352 F. Supp. 2d 578, 596 (W.D. Pa. 2005).

50. *United States v. Extreme Associates, Inc.*, 431 F.3d 150 (3d Cir. 2005).

51. Paula Reed Ward, *Guilty Plea in Porn Case*, PITT. POST-GAZETTE, Mar. 12, 2009, at B1, available at 2009 WLNR 4686024.

52. Paula Reed Ward, *Porn Producer, Wife Get 1-Year Jail*, PITT. POST-GAZETTE, July 2, 2009, at A1, available at 2009 WLNR 12600690.

53. *Id.*

54. *Id.*

Before the final decision was made to pursue this investigation within the Western District, I had been attending a training conference at the Justice Department's training facility in South Carolina and had met with members of the Child Exploitation and Obscenity Section⁵⁵ to discuss the *Extreme Associates* case. During that meeting, I viewed a sampling of the content that Extreme Associates had produced. Upon viewing it, I concluded that I was interested in taking it back to the district, discussing it with the prosecutors and investigators, and then pursuing this if legally possible.

QUESTION: After viewing that content, were you confident, at that moment, that if you put this material before a jury, that it would be sufficiently repulsed by it?

BUCHANAN: After viewing the material, I, myself, even after having seen a number of different productions throughout my career, was physically ill. I felt comfortable that I do represent the community standard within the district and that people within this district would have a similar reaction to it.

55. This unit of the U.S. Department of Justice was created in 1987 and it:

leads the Department of Justice in its endeavor to continuously improve the enforcement of federal child exploitation laws and prevent the exploitation of children. CEOS attorneys prosecute defendants who have violated federal child exploitation laws and also assist the 94 United States Attorney Offices in investigations, trials, and appeals related to these offenses. In addition, CEOS attorneys perform other vital functions within the Criminal Division of the Department of Justice, including providing advice and training to federal prosecutors, law enforcement personnel, and Department of Justice officials, developing prosecution policies, legislation, government practices and agency regulations, and participating in national and international meetings on training and policy development.

Child Exploitation and Obscenity Homepage, <http://www.justice.gov/criminal/ceos> (last visited Oct. 31, 2010) (describing the mission of the Child Exploitation and Obscenity Section "to protect the welfare of America's children and communities by enforcing federal criminal statutes relating to the exploitation of children").

QUESTION: Would there be anything to stop another U.S. Attorney from bringing a prosecution on the same material in his or her district because each community would have its own standard?

BUCHANAN: There are often a number of areas where cases could be brought in multiple jurisdictions throughout the United States. Whenever a prosecutor recognizes that a particular case could be brought elsewhere, the U.S. Attorney communicates with the appropriate section in the Justice Department that they're going to be proceeding with a case that could have interest in other districts. That's how we coordinate our efforts and ensure that there aren't multiple offices investigating the same defendant.

In the *Extreme Associates* case, I communicated with Drew Oosterbaan, who was head of the Child Exploitation and Obscenity Section,⁵⁶ as well as with John Malcolm, who was Deputy Assistant Attorney General for the criminal division and who oversaw the area of child exploitation and obscenity.

QUESTION: Do you believe that adult entertainment content became harder or rougher, as it were, during the administration of Bill Clinton because he and former U.S. Attorney General Janet Reno did not prosecute obscenity cases involving adult movie companies?

BUCHANAN: With the fact that there had not been any meaningful prosecutions of obscenity in at least a decade, the quantity and the content of the material certainly became much more extreme. The adult entertainment industry was looking at how far the boundary lines could be pressed. Certain individuals within the industry suggested what those boundary lines were, but there were others in the industry, like Robert Zicari and Janet

56. See Press Release, U.S. Department of Justice, Attorney General Ashcroft Appoints Andrew G. Oosterbaan as Chief of the Child Exploitation and Obscenity Section (Nov. 14, 2001), available at http://www.justice.gov/opa/pr/2001/November/01_crm_593.htm (describing Oosterbaan's appointment to head the CEOS, and quoting then-U.S. Attorney General John Ashcroft for the proposition that "Andrew's many years of experience in complex criminal matters should put on notice those who seek to exploit children or violate our nation's obscenity laws [sic] will be punished to the fullest extent of the law").

Romano, who had no intention of complying with whatever the boundaries were or whatever the law required.

QUESTION: Robert Zicari was not a popular figure within the adult industry. In fact, we've done interviews with Larry Flynt and even he says you don't do these types of things because they're horrible acts.⁵⁷ So Zicari's not a popular figure there.⁵⁸ Did you ever have the sense that nobody rallied around him in the adult industry because of that?

BUCHANAN: There were very few people that rallied around Robert Zicari. Initially, there were some who have a more

57. In particular, Flynt told the authors of this article:

Rob Black called me and asked me for a contribution. I wouldn't give him a nickel. Here's my position: There are certain things you don't do, not because you don't feel you have the right to do them, but because they are indefensible in court. You can't take a girl and shove her head in a commode full of shit, pull her up, and have a camera on her face and have that as part of your video. There's no erotic theme there—it serves no purpose. When this guy produces it—his company is called Extreme Associates and he named it properly—he's making it difficult for the whole industry. I hope he'll get acquitted, but I don't think he will. Obviously they went after him instead of coming after me because he is the worst.

Robert D. Richards & Clay Calvert, *Obscenity Prosecutions and the Bush Administration: The Inside Perspective of the Adult Entertainment Industry & Defense Attorney Louis Sirkin*, 14 VILL. SPORTS & ENT. L.J. 233, 281 (2007).

58. Zircari's disfavor in the adult industry extends beyond the content of the works he distributes. Adult industry insider Joy King of Wicked Pictures has stated:

I don't believe there is any support on a financial level for Rob Black. I think that was a great point of dissention for him. He felt the industry should have backed him a little more monetarily. The problem is that he's never supported any of the industry trade associations, so it's really difficult for the industry to gather around him in his time of need when he spit on everybody else for his entire career. That's tough—so there's a little infighting in the industry, but you'll find that anywhere.

Id. at 282.

purist view of the First Amendment and how it relates to sexually explicit material. They wanted to try to defend his movies. But once people decided to look at what he was really making, even those with an idealistic perspective recognized that the material produced by Extreme wasn't protected.

QUESTION: Why did you target Extreme Associates rather than more well-known and mainstream adult movie companies such as Vivid⁵⁹ or Wicked Pictures?⁶⁰

BUCHANAN: The role of a prosecutor is to protect the public and enforce the law. We don't bring these cases for an academic exercise and we do have limited resources, as we discussed earlier. In the view of most prosecutors, we have to use those resources very carefully and to bring the cases that are going to have the greatest impact. That could be from the nature of the material, the level of distribution, or the profits made from a particular production. Those are the criteria that I and many of my colleagues use to decide what types of cases to bring.

QUESTION: Do you think the result in the *Extreme Associates* case had an impact on the adult entertainment industry?

BUCHANAN: I believe the *Extreme Associates* case had a significant impact on the industry. I personally met with and talked to attorneys who represent others in the industry. The prosecution of Extreme Associates and others caused the producers to look carefully and be more careful in trying to comply with the law in the materials that they were producing and releasing to the public.

QUESTION: Your office certainly had to spend a considerable amount of time on the *Extreme Associates* case — the appeal to the Third Circuit in the early stages, for instance. Were you happy with the ultimate outcome?

59. See Kevin Modesti, *For Vivid Celebration, a Star is Porn Again: ADULT: Christy Canyon, Now a Mom, Looks Back on Her Career*, DAILY NEWS (L.A., Cal.), Feb. 14, 2009, at A1, available at 2009 WLNR 6901465 (describing the southern California-based Vivid Entertainment Group as "[t]he world's largest producer of adult films," noting that it "has grown from a two-room office to four-story corporate digs," and adding that in 2009, it celebrated its twenty-fifth anniversary).

60. See Matt Richtel, *Lights, Camera, Lots of Action. What, You Want a Script, Too?*, N.Y. TIMES, July 8, 2009, at A1 (describing Wicked Pictures).

BUCHANAN: I think it would be more accurate to say that the *Extreme Associates* case took a long time because of the number of years between the indictment and the final sentence rather than to say that our office spent time during that period. There were periods of time when more than a year would go by without any activity on the case at all and that was not due to the efforts of my office. While I would like to have seen the case adjudicated in a more efficient and succinct manner, the fact that it did go to the Court of Appeals has given us a clear and concise statement that the Supreme Court precedent is still alive and well and that neither the Internet nor the passage of time has, in any way, affected the validity of the Supreme Court *Miller* precedent.

QUESTION: Can you estimate how many people in your office were involved with the case or how much time was devoted to it?

BUCHANAN: During the course of the investigation and prosecution, there were a total of two Assistant U.S. Attorneys and myself who had any involvement with the *Extreme Associates* case.

QUESTION: What was your reaction when U.S. District Judge Gary Lancaster issued his now-reversed ruling throwing out your case against Extreme Associates on the *Lawrence v. Texas*⁶¹ rationale, along with some of his *dicta* about how Justice Scalia surely wouldn't say anything in *Lawrence* that he didn't really mean?⁶²

61. 539 U.S. 558 (2003).

62. Judge Lancaster wrote:

In a dissenting opinion joined by Chief Justice Rehnquist and Justice Thomas, Justice Scalia opined that the holding in *Lawrence* calls into question the constitutionality of the nation's obscenity laws, among many other laws based on the state's desire to establish a "moral code" of conduct. *Lawrence*, 539 U.S. at 590 (Scalia, J., dissenting). It is reasonable to assume that these three members of the Court came to this conclusion only after reflection and that the opinion was not merely a result of over-reactive hyperbole by those on the losing side of the argument.

United States v. Extreme Assoc., Inc., 352 F. Supp. 2d 578, 590 (W.D. Pa. 2005), *rev'd*, 431 F.3d 150 (3d Cir. 2005).

BUCHANAN: Our view of Judge Lancaster’s opinion in the *Extreme Associates* case was that he was searching for a way to take an action that he felt was just in the case. Unfortunately, that’s not the way opinions should be arrived at.

There was clear precedent that the judge should have followed. The Supreme Court has repeatedly said that unless it is addressing a specific issue, *dicta*, or other comments within an opinion — if it’s not specifically overruling a prior precedent — the circuit courts and the district courts cannot read into a Supreme Court decision any more than the Court intended.

QUESTION: Perhaps the other argument with regard to a national community standard has to do with the Ninth Circuit in *United States v. Kilbride*⁶³ reading a lot into the U.S. Supreme Court’s decision in one of the Child Online Protection Act cases that referenced a national standard.⁶⁴

BUCHANAN: I don’t believe that the COPA decision created a national standard. The COPA decision considered whether a national standard was needed in cases involving the Internet. The Court has not, at any time, determined that the community standard is no longer valid.

QUESTION: Briefly, just a question about your opposing counsel in this area — Louis Sirkin⁶⁵ and Jennifer Kinsley⁶⁶ — do you think they were effective advocates for Extreme Associates?

63. 584 F.3d 1240 (9th Cir. 2009).

64. The Ninth Circuit in *Kilbride* relied heavily upon language cobbled together from multiple opinions in *Ashcroft v. ACLU*, 535 U.S. 564 (2002), in which the nation’s high court examined the constitutionality of the Child Online Protection Act.

65. On his law firm’s official website, Sirkin is described as “one of the nation’s preeminent First Amendment and criminal defense attorneys. In his over 40 years of practice, Sirkin has consistently defended the free speech and constitutional rights of countless individuals and businesses, including adult entertainment establishments, museums, artists, activists, and ordinary citizens in all types of cases.” H. Louis Sirkin, Attorney Profiles, Sirkin, Kinsley, & Nazzarine, <http://www.skn-law.com/index.php?page=sub-2> (last visited Oct. 31, 2010).

66. Kinsley, a founding partner with H. Louis Sirkin in their law firm, “dedicates her practice to fighting governmental abuse of civil and constitutional rights. She has a passion for the underdog and works tirelessly to protect and defend the impoverished, the improperly silenced, and the

BUCHANAN: We felt, throughout the course of the litigation, that Lou Sirkin and Jennifer Kinsley represented their clients to the best of their ability with the law they had available to them. They are accomplished counsel in this regard, and they were very creative in the arguments they made throughout the case, but the law is clear in this case. The precedents had not been changed through a series of unrelated court opinions. While they tried mightily to persuade the court that was the case, it just wasn't so.

QUESTION: If the case had gone to a jury, do you think it would have made any difference that Jennifer Kinsley — a woman — would be there defending the Extreme Associates' content?

BUCHANAN: I think that might have been the case ten or twenty years ago. Certainly, I don't think a jury today would be swayed by the sex of the defense counsel.

C. United States v. Fletcher

The obscenity prosecution of Karen Fletcher was aptly described in a *Pittsburgh Post-Gazette* editorial as “a curious case”⁶⁷ because she “never created anything beyond her words,”⁶⁸ which consisted of writing and then posting online “stories depicting the rape, torture and murder of children that conjured images only in readers' minds.”⁶⁹ The case even was covered in *The New York Times*, which pointed out that since the adoption of the *Miller* test in 1973, “there has not been a successful obscenity prosecution in the country that did not involve drawings or photographs.”⁷⁰ Attorney Lawrence Walters, who was on the same panel with Buchanan at the *First Amendment Law Review* symposium and

wrongfully accused.” Jennifer M. Kinsley, Attorney Profiles, Sirkin, Kinsley, & Nazzarine, <http://www.skn-law.com/index.php?page=kinsley> (last visited Oct. 31, 2010).

67. Editorial, *Disturbing Words: A Writer is Sentenced for Painting Horrible Images*, PITT. POST-GAZETTE, Aug. 12, 2008, at B4, available at 2008 WLNR 15065866.

68. *Id.*

69. *Id.*

70. Lewis, *supra* note 10, at A27.

who was one of the attorneys who represented Fletcher, told the authors of this article during a May 2007 interview:

I certainly hope this is not a new policy shift in the U.S. government out of Washington, but it is affecting this grandmother who is now in fear for her life and going to jail for years for something that she wrote as the result of some therapeutic efforts. It really is a shame that she has to deal with this odd series of events and be made the victim, but that's where we stand.⁷¹

But Mary Beth Buchanan, as this section reveals, did not see it as odd at all; as she stated in a press release announcing the six-count indictment of the fifty-four-year-old Fletcher in September 2006, “[u]se of the Internet to distribute obscene stories like these not only violates federal law, but also emboldens sex offenders who would target children.”⁷² That same press release described the Justice Department’s version of the key facts:

Fletcher owned a publicly accessible website www.red-rose-stories.com. The website included areas and content available to the public, consisting primarily of excerpts from extremely explicit and graphic stories describing the sexual abuse, rape, torture and murder of children. The website advertised that additional areas and content were available for those who purchased a membership to the website and became a “member” of www.red-rose-stories.com. For a fee, members to the

71. Clay Calvert & Robert D. Richards, *A War over Words: An Inside Analysis and Examination of the Prosecution of the Red Rose Stories & Obscenity Law*, 16 J.L. & POL’Y 177, 201 (2007).

72. Press Release, United States Attorney’s Office, Western District of Pennsylvania, Donora Woman Charged with Distributing Obscene Matter on the Internet (Sept. 27, 2006), available at http://www.justice.gov/criminal/ceos/Press%20Releases/WDPA%20Fletcher%20indict%20PR_092706.pdf.

website could access and download the full text of each advertised story.⁷³

In May 2008, Karen Fletcher pleaded guilty before U.S. District Judge Joy Flowers Conti to six counts of distributing obscenity,⁷⁴ citing her agoraphobia as a reason for not going on to trial.⁷⁵ She was sentenced to five years of probation—the first six months entailed home confinement—a \$1,000 fine, and the forfeiture of the computer equipment she used to run her website.⁷⁶

In this section, Buchanan explains and defends her decision to prosecute Karen Fletcher. She also compares the content in Fletcher's stories with the movies produced and distributed by Extreme Associates.

QUESTION: When you filed the case against Karen Fletcher, did you ever think the case would draw headlines in *The New York Times*?⁷⁷

BUCHANAN: At the time we initially filed the case, we recognized that it was a type of prosecution that had not been brought in many years, but certainly we never imagined that it would draw as much attention nationwide as it did.

QUESTION: Why do you think it drew attention?

BUCHANAN: There are probably several reasons. First, after the *Extreme Associates* case, there was particular attention paid to the Western District of Pennsylvania — the fact that we were bringing cases that had not been brought within the last decade. So, to have two cases that were viewed as novel within the same district may be a reason why the *Fletcher* case drew as much attention as it did.

73. *Id.*

74. Plea, United States v. Fletcher, No. 06-329 (W.D. Pa. Aug. 7, 2008), available at <http://www.citmedialaw.org/sites/citmedialaw.org/files/2008-08-07-Fletcher's%20Plea.pdf>.

75. Paula Reed Ward, *Afraid of Public Trial, Author to Plead Guilty in Online Obscenity Case*, PITT. POST-GAZETTE, May 17, 2008, at A1, available at, 2008 WLNR 9346746.

76. Press Release, U.S. Department of Justice, Pennsylvania Woman Pleads Guilty and is Sentenced on Obscenity Charges (Aug. 7, 2008), available at <http://www.justice.gov/opa/pr/2008/August/08-crm-699.html>.

77. See Lewis, *supra* note 10, at A27.

QUESTION: What about the fact that the case was word based — no images, photographs, or drawings? Was that a factor in attracting attention?

BUCHANAN: That certainly is another very significant reason why there was so much interest in the *Fletcher* case. The Supreme Court had stated that obscenity is not limited to an image. It could be written. It could be music. It could take many different forms.

The *Fletcher* case certainly was within the purview of the obscenity statute and consistent with the Court's prior opinions. The material that was contained in the stories written by Karen Fletcher involves the rape and torture of infants. We viewed the material and felt if there were any written words that a jury would find obscene, it was clearly the stories written by Karen Fletcher.

QUESTION: How did the material written by Karen Fletcher come to your attention?

BUCHANAN: The *Fletcher* case came to our attention through the investigative agencies. I don't recall precisely how it came to our attention, but I can tell you that my office did not request investigative agencies to look at the case. Rather, it was brought to us by investigative agencies.

QUESTION: When you took the case did you anticipate that attorneys like Lawrence Walters and others associated with the adult industry would take such an active role in the case, especially because it's not an adult industry case?

BUCHANAN: It didn't necessarily surprise me because I had watched Larry Walters give numerous interviews, both in print media and on various news programs, about the *Extreme Associates* case. So it didn't surprise me that he took the same interest in this case.

QUESTION: To which work did you personally object more — that of Karen Fletcher or that of Robert Zicari?

BUCHANAN: I couldn't distinguish between. They are equally repulsive.

QUESTION: In a 2007 *New York Times* article regarding the Karen Fletcher case, Harvard Professor Laurence Tribe stated that "the idea that the written word alone can be prosecuted pushes to

the limit the underlying rationale of the obscenity law.”⁷⁸ What do you think about that assertion?

BUCHANAN: Professor Tribe’s assertion ignores one of the primary purposes for our obscenity statutes — to protect and preserve public morals. If stories about killing and raping infants cannot be viewed to affect public morals, I’m not sure what would.

QUESTION: Does it make any difference that the Karen Fletcher stories were located on a password-protected website — with twenty-nine or so subscribers — and probably would not see the light of day beyond that small group?

BUCHANAN: That distinction does not shield the “Red Rose Stories” from prosecution. It’s not unlike the material in the *Extreme Associates* case that often required a membership, a credit card, and verification for a member to receive the material.

QUESTION: What was the harm caused by Karen Fletcher’s stories that justified the prosecution?

BUCHANAN: The harm created by these stories had to be judged on the community standards of the Western District. The average person within the district would be hard pressed not to find that stories regarding torture and rape of infants would be viewed as patently offensive.

QUESTION: But no child was hurt in the production of those stories because they were fictional. No one read them who didn’t want to read them.

BUCHANAN: The criminal laws that we enforce are enforced for many reasons — to punish those who violate the instant act and also to prevent and deter others from engaging in similar conduct. So, while the “Red Rose Stories” might have involved one author and a small number of subscribers, the prosecution of this case will have a great impact on deterring others from engaging in this kind of conduct. As the Internet has grown since its inception, the material that is available online has grown as well. This prosecution — I have no doubt — will have a deterrent effect on those who might view this as being non-harmful activity just because it’s the written word and not an actual image.

78. *Id.*

QUESTION: Were you concerned that groups like NAMBLA⁷⁹ and others who host chat rooms might proliferate on the Internet?

BUCHANAN: It was amazing to us that anyone would have an interest in writing these types of stories or that anyone would like to read them, but we don't look at who might do it. We look to meet the goals of law enforcement to prevent anyone from engaging in similar conduct.

QUESTION: Did it make any difference that part of her defense was that her therapist had encouraged her to write these stories?

BUCHANAN: Absolutely not. What did impact our judgment on the ultimate resolution of the case was her physical and mental status at the time of sentencing.

QUESTION: Was the sentence in that case less important to you than the actual conviction? You could almost say that in-house detention for someone who has agoraphobia sounds like fodder for late-night comedians. Yet, having the conviction on the record does some of those other things you referenced earlier, such as serving as a deterrent.

BUCHANAN: In both the *Extreme Associates* case and the *Fletcher* case, the ultimate punishment was not the primary goal. The goal was the conviction and the deterrent effect that it would have on others in the industry. The purpose was to enforce the law.

QUESTION: Lenny Bruce was prosecuted for obscenity in the 1960s based upon words-only comedic monologues.⁸⁰ Is it ever

79. This is the acronym for the North American Man/Boy Love Association, which has an active Internet presence at <http://www.nambla.org>. It describes its primary goal as "to end the extreme oppression of men and boys in mutually consensual relationships." Who We Are, NAMBLA, <http://www.nambla.org/welcome.htm> (last visited Oct. 31, 2010).

80. See John Kifner, *No Joke! 37 Years After Death Lenny Bruce Receives Pardon*, N.Y. TIMES, Dec. 24, 2003, at A1 (reporting that "Lenny Bruce, the potty-mouthed wit who turned stand-up comedy into social commentary, was posthumously pardoned yesterday by Gov. George E. Pataki, 39 years after being convicted of obscenity for using bad words in a Greenwich Village nightclub act.").

possible today for a words-only comedic monologue given in a comedy club to be obscene, in your opinion?

BUCHANAN: I really can't speculate on that.

*D. United States v. Stevens*⁸¹

As described in the Introduction, this case centered on the constitutionality of a federal law prohibiting “the commercial creation, sale, or possession”⁸² of any visual or audio depiction “in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed.”⁸³ At the time the interview with Buchanan took place, the Supreme Court had heard oral argument in the case — Buchanan, in fact, attended the oral argument — but had yet to issue a ruling.

On April 20, 2010, the Supreme Court found the law “create[d] a criminal prohibition of alarming breadth”⁸⁴ before overturning it.⁸⁵ The law reached depictions of any illegal killing of an animal, whether a case of cruelty or a technical violation of a hunting regulation.⁸⁶ It also barred the sale of a picture or video, if the killing shown would be illegal in that jurisdiction, even if it was made in a place where the killing was legal.⁸⁷ In the process of striking down the law as overbroad, the Court issued a rebuke of the government’s argument that any constitutional problem with the statute’s structure would be cured by prosecutorial discretion.⁸⁸

In this section, Buchanan answers questions about *United States v. Stevens*.

81. 559 U.S. ___, 130 S. Ct. 1577 (2010).

82. 18 U.S.C. § 48 (c)(1) (2006).

83. *Id.*

84. *Stevens*, 559 U.S. at ___, 130 S. Ct. at 1588.

85. *Id.* at 1592.

86. *Id.* at ___, 130 S.Ct. at 1588-90.

87. *Id.* at ___, 130 S.Ct. at 1588-89 (noting that the sale of any hunting videos in Washington, D.C., would be illegal under the statute since all hunting is banned in the district).

88. “[T]he First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.” *Id.* at ___, 130 S.Ct. at 1591.

QUESTION: Your office handled the prosecution of Robert Stevens, a case currently pending before the United States Supreme Court. Stevens was charged under 18 U.S.C. § 48. The legislative history of Section 48 shows that Congress wanted to have a mechanism to prosecute so-called “crush videos,”⁸⁹ yet Mr. Stevens produced pit bull-related videos and merchandise. Why prosecute him, rather than a “crush video” producer, as a test case for this statute?

BUCHANAN: Our job is to enforce the law against violations that occur in the district. We don’t go and seek certain types of criminal activity to prosecute. We prosecute the criminal activity that occurs in the district.

In the *Stevens* case, law enforcement was investigating a dog-fighting ring. The materials that were distributed by Stevens were discovered during the course of that investigation. Prosecuting Stevens for producing and distributing these videos was another way to address the underlying conduct of dog fighting.

QUESTION: So, the *Stevens* material had made its way into the Western District of Pennsylvania prior to law enforcement ordering it in?

BUCHANAN: That’s my understanding, yes. The dog-fighting videos in *Stevens* were brought to us by the Pennsylvania State Police. This investigation was not initiated by federal law enforcement.

QUESTION: One of the issues in the *Stevens* case is whether the Supreme Court should recognize an entirely new category of speech — depictions of animal cruelty — as outside the ambit of First Amendment protection. The Court has done so rarely — for instance, fighting words, true threats, obscenity, and child pornography. Why is this category of speech deserving of such treatment?

BUCHANAN: The federal statute at issue in *Stevens* criminalized the production and distribution of certain material

89. A crush video is “a video in which a woman, usually wearing high heels, tortures and crushes an animal with her foot.” Joseph J. Anclien, *Crush Videos and the Case for Criminalizing Criminal Depictions*, 40 U. MEM. L. REV. 1, 2 (2009) (citing H.R. REP. NO. 106-397, at 2 (1999)).

depicting animal cruelty that was specifically defined in the statute, so it's not just a particular category. It's conduct — harming animals — that meets the specific criteria set forth in the statute. Yes, the law can take a particular category of activity — whether it's cruelty in a certain way to children, animals, or adults — that the Court believes is outside the protection of the First Amendment.

QUESTION: The statute does embody and expand some of the third prong of the *Miller* test in terms of serious educational, scientific, artistic value, and things like that.

BUCHANAN: That's correct. In fact, the obscenity laws do not contain the exceptions. The exceptions that we all talk about with regard to the *Miller* test were created by the U.S. Supreme Court in *Miller*. The statute used in the prosecution of the *Stevens* case — 18 U.S.C. § 48 — contains the exceptions right in the body of the statute itself. It's clear that Congress wanted to make absolutely certain the type of conduct that should be covered by the statute and the type of conduct that should be outside of the statute.

Even if the original congressional intent was directed at a particular conduct — crush videos — that doesn't mean that other types of material that meet that standard shouldn't also be equally prosecuted.

QUESTION: The oral argument, which you attended, included an exchange by Justice Scalia about hunting videos possibly being swept up under the statute.⁹⁰ What did you think of that?

BUCHANAN: I participated in the review of the briefs that were submitted. I participated in the “moots” that were held prior to the argument, as well as attending the argument myself.

90. See David G. Savage, *So a 'Human Sacrifice Channel' is OK?*, L.A. TIMES, Oct. 7, 2009, at A18 (reporting on the oral argument in *Stevens* and noting that “most of the justices sounded wary of reviving the law, fearing it might be used to ban depictions of legal activities such as hunting,” while “Justice Antonin Scalia, an avid hunter, insisted the 1st Amendment does not allow the government to limit speech and expression, unless it involves sex or obscenity”).

The comments that were made by Justice Scalia were, in my view, his attempts to focus the Court on the types of material that would not be encompassed within the statute. There's a huge difference between a hunting video, which is not intended to cause the type of suffering and cruelty that Section 48 attempted to address, and what was being charged here. So I think that Justice Scalia's comments were actually helpful by making a distinction between the material that wouldn't be covered and the material depicted in the *Stevens* case.

QUESTION: The government has taken the position that this statute is needed to guard against cruelty to animals, yet anti-animal cruelty statutes have been enacted in all fifty states and the District of Columbia. Why, then, is Section 48 necessary?

BUCHANAN: Federal law, in many respects, represents a way in which state law can be complemented by federal law enforcement. Animal cruelty is very difficult to prosecute because this conduct often occurs underground — it's very difficult to investigate and find.

The dog-fighting videos are one way in which law enforcement can determine who is involved in this activity and who is purchasing or receiving this material. It's yet another way that this type of activity can be addressed. It's not unlike cases involving other types of illegal conduct, which may be illegal within a state itself, but also is illegal if it occurs across state lines. It's complimentary to a state's law enforcement efforts.

QUESTION: Does it help the prosecution that the dog-fighting incidents involving Michael Vick were occurring around the same time and drew a great deal of attention to this type of activity?⁹¹

BUCHANAN: It's quite possible that the Michael Vick case caused the public to realize that cruelty to animals and animal fighting occurs often throughout the country. Often with the cases

91. See generally Michael S. Schmidt & Judy Battista, *Vick in a Deal To Plead Guilty To Dogfighting*, N.Y. TIMES, Aug. 21, 2007, at A1 (reporting that "Michael Vick, the star quarterback of the Atlanta Falcons, agreed . . . to plead guilty to dogfighting charges in a deal with federal prosecutors that probably will land him in prison while he is in the prime of his N.F.L. career").

we bring, particularly with obscenity or child exploitation, members of the public are not involved in this material and don't have any occasion to view it. They are often stunned that this activity goes on. The *Vick*⁹² case probably did raise public awareness that this is an issue that is worthy of law enforcement's attention.

QUESTION: The Third Circuit was not convinced by the government's arguments that Section 48 is necessary because it indirectly deters future animal cruelty by reducing the chance that viewers will become desensitized to violence and that it will serve to dry up the market for these videos. Do you expect the Supreme Court will be more receptive to these positions?

BUCHANAN: There were several members of the Supreme Court who did appear to be receptive to it. Whether a majority of the Court will agree with the government's position remains to be seen.

III. CONCLUSION

A March 2009 article in the *Pittsburgh City Paper* describes Extreme Associates' owner and producer Rob Zicari entering his guilty plea in the federal obscenity prosecution against him, his company, and his wife:

Zicari looked like a shell of his former boisterous self. He stood [there] before Judge Gary D. Lancaster prior [to] his obscenity trial and did, indeed, cop a plea. Now the [Porn] King and his wife face five years in prison. They've become two more trophy heads on the wall for one of the Bush administration's most controversial appointees.⁹³

92. Plea, *United States v. Vick*, Criminal No. 03-07CR274 (E.D. Va. 2007).

93. Charlie Deitch, *Mary Beth Buchanan Mounts Her Defense*, PITT. CITY PAPER, Mar. 25, 2009, available at, 2009 WLNR 7014416 (noting that Zicari had once confidently proclaimed in a video he made called *The President vs. the Porn King* that: "We will not go away We will not back down. We will not cop a plea.").

The metaphorical hunter described above is then-U.S. Attorney for the Western District of Pennsylvania, Mary Beth Buchanan, “who was present for the plea.”⁹⁴ The newspaper noted that the courtroom scene “was a marked change for Zicari, who had previously been openly defiant of Buchanan.”⁹⁵ That same publication also has suggested that “Buchanan’s tenure has been marked by high-profile, controversial and sometimes head-scratching cases.”⁹⁶

Yet, Buchanan makes no apologies for her decision to pursue obscenity charges against the Southern California-based adult entertainment company Extreme Associates and its principals⁹⁷ or Karen Fletcher,⁹⁸ the agoraphobic grandmother whose text-only stories appeared solely on a password-protected website. In fact, when asked by the authors of this article to choose which content she found more personally objectionable, she couldn’t distinguish between the two noting, “[t]hey are equally repulsive.”⁹⁹ Indeed, one of the several illuminating parts of the interview that forms the centerpiece of this article is the insight Buchanan provided into why she decided to prosecute these cases.¹⁰⁰

For Buchanan, the primary purpose of obscenity law is “to protect and preserve public morals.”¹⁰¹ How the community at large views the material is key for her, not the fact that consenting adults produce the material for consumption by other consenting adults.¹⁰²

94. Charlie Deitch, *Buchanan Wins Another Online Obscenity Case*, PITT. CITY PAPER, Mar. 11, 2009, available at <http://www.pittsburghcitypaper.ws/gyrobase/Content?oid=oid%3A60259> (reporting that Buchanan had charged Zicari and Janet Romano “with 10 counts of disseminating obscene materials through the mail and over the Internet to western Pennsylvania”).

95. *Id.*

96. See Deitch, *supra* note 93 (noting that Buchanan has “taken on obscenity, drug paraphernalia and pain doctors”).

97. See *supra* notes 40-66 and accompanying text.

98. See *supra* notes 67-80 and accompanying text.

99. See *supra* p. 87.

100. See *supra* Part II.A., pp. 62-74.

101. See *supra* note 78 and accompanying text, p. 87.

102. See *supra* notes 34-35 and accompanying text, pp. 65-67.

As she made clear during the interview, “We have limits in our law for the type of materials that can be distributed in public, regardless of who makes it or what they believe they’re doing at the time they make sexually explicit material.”¹⁰³

As a federal prosecutor, she was aided in this endeavor by nearly four decades of legal precedent, capped off by the landmark Supreme Court decision in *Miller v. California*.¹⁰⁴ Although the continued viability of the *Miller* test, particularly in light of the pervasiveness of the Internet, has been called into question for some time,¹⁰⁵ Buchanan finds the standard “was a good test in 1973 and is still a good test for us, as a community, to determine whether certain material is viewed as obscene.”¹⁰⁶ She rebuffs the notion that a national standard for determining obscenity might make more sense in an age where material can be distributed in all fifty states — indeed globally — with the stroke of a computer key. In fact, she makes the counter-argument that adult content producers, thanks to technology, can restrict where their material goes adding, “they can certainly limit their distribution of it to certain parts of the country in their acceptance of members to any particular sites.”¹⁰⁷ Although that technologically may be available, such a position overlooks the point that material is not deemed to be obscene until a jury concludes that it meets the strictures of the *Miller* test. Consequently, it is not possible to predict with any degree of confidence how a particular community will view the material. Buchanan conceded that “it’s not absolutely certain until the jury comes back with a verdict,” but nonetheless felt adult content producers know “exactly what they’re doing, they know what the law is and they have a pretty good idea of how juries are

103. *Id.*

104. *See supra* notes 30-31 and accompanying text, pp. 63-64.

105. *See, e.g.,* Clay Calvert, *Regulating Sexual Images on the Web: Last Call for Miller Time, But New Issues Remain Untapped*, 23 HASTINGS COMM. & ENT. L.J. 507, 516 (2001) (suggesting that “Miller’s time has passed, outstripped by new technology and new beliefs, including a mainstreaming of adult pornography in the United States that dilutes the value of the test”).

106. *See supra* notes 27-28 and accompanying text, pp. 62-63.

107. *See supra* p. 64.

going to view this material.”¹⁰⁸ While Buchanan made headlines¹⁰⁹ and a name for herself¹¹⁰ with the prosecutions of Extreme Associates and Karen Fletcher, she was quick to point out that “[t]here were more than 5,000 convictions and only two of those cases were obscenity cases.”¹¹¹ As the *Pittsburgh City Paper* reported, “where Buchanan’s office really shined for the Justice Department was in the courtroom.”¹¹² Moreover, her influence was not limited to day-to-day prosecutorial duties, as she accepted additional responsibilities, including the role of Acting Director of the Department of Justice’s Office on Violence Against Women.¹¹³ But, as Buchanan told the authors of this article, one of the biggest accomplishments of her tenure in office “was the increase in our working relationship with law enforcement on every level.”¹¹⁴ She credits much of the success of her office to that enhanced cooperation while observing, “[w]e worked much more with law enforcement at different levels to accomplish our goals. Without having those relationships, we would not have been able to protect the public to the extent that we did.”¹¹⁵

108. See *supra* notes 36-37 and accompanying text, p. 67-68, 73.

109. See *supra* note 10.

110. See Deitch, *supra* note 93 (quoting Duquesne University law professor Bruce Ledewitz as stating, “I’m sitting here trying to think of other cases that she’s brought, and I can’t remember any of them except two porn cases and the case against Cyril Wecht”).

111. See *supra* note 37 and accompanying text, p. 73.

112. Deitch, *supra* note 93.

113. *Id.* (reporting that she “served in the Department of Justice as the chair of John Ashcroft’s advisory committee; as a member of the advisory committee to the U.S. Sentencing Commission; director of the executive office for United States Attorneys; and Acting Director of the Department of Justice’s Office on Violence Against Women”).

114. See *supra* p. 73.

115. *Id.*